STATE OF MICHIGAN

COURT OF APPEALS

CITY OF HOLLAND, Plaintiff-Appellee,	UNPUBLISHED June 18, 2013
v	No. 309367 Ottawa Circuit Court
JENIFER L. FRENCH, Defendant-Appellant.	LC No. 10-0011684-CZ

Before: GLEICHER, P.J., and O'CONNELL and MURRAY, JJ.

PER CURIAM.

Jenifer French served for six years as the city clerk for the city of Holland. The city decided that she had falsely claimed residence in Holland and terminated her employment. The issue of French's residence arose when French filed a principal residence tax exemption (PRE) affidavit identifying Holland as her principal residence. City officials believed that French actually resided in Douglas. After French was fired, the Michigan Tax Tribunal (MTT) found that French failed to establish that the Holland home qualified as her "true, fixed, and permanent abode" and denied her a PRE.

French challenged the city's termination decision. In accordance with the city's employee handbook, the parties arbitrated whether the city had just cause to fire her. An arbitrator found in French's favor, concluding that because she had not dishonestly identified Holland as her principal residence, the city lacked just cause to discharge her. The circuit court vacated the arbitration award, ruling that it conflicted with the MTT's opinion and that the arbitrator failed to address every reason advanced by the city in support of French's termination. A subsequent arbitration resulted in an award in the city's favor.

Judicial respect for arbitration requires that courts refrain from second-guessing an arbitrator's fact-finding, even if a panel of judges would have decided the case differently. Because the first arbitrator directly and decisively addressed the core issue he was specifically empowered to decide – whether French had been terminated for just cause – the circuit court

should not have "subject[ed] the reasoning . . . to beady-eyed scrutiny."[1] Nor do we find merit in the circuit court's collateral estoppel ruling, as the MTT had no interest in whether just cause existed for French's firing. Accordingly, we reverse and remand for the entry of an order enforcing the initial arbitration award.

I. BACKGROUND

In July 2000, Jenifer French was appointed as Holland's City Clerk. French lived with her two children and husband, Nicholas French, in Douglas, Michigan, a small town just south of Saugatuck. On December 23, 2003, Stro-men's, Inc., a corporation owned by Nicholas, purchased a home at 925 South Shore Drive on Lake Macatawa in Holland. On April 10, 2004, Nicholas filed a "Homestead Exemption Affidavit" with the State of Michigan on behalf of Stro-men's. Nicholas claimed that he had made the Holland home his residence as of April 3, 2004. The purpose of the affidavit was to take an $8,000 principal residence exemption (PRE) on his income tax forms. On May 18, 2006, the city assessor denied Nicholas's PRE.

In the meantime, Stro-men's sold the Holland home to French. On March 17, 2005, French registered to vote in the city of Holland. She changed her driver's license to reflect the Holland home as her residence. On April 25, 2005, French filed a "Homeowner's Principal Residence Exemption Affidavit" with the State of Michigan, claiming that she made the Holland home her principal residence on March 17, 2005. The French's two children were already enrolled in Holland public schools. French later explained that she and the children moved into the Holland home to be closer to work and school and that Nicholas remained in the partially unfinished Douglas home to care for the family pets and because he conducted his business from that location. French and her husband filed separate tax returns that year, with French claiming a PRE for the Holland home and Nicholas claiming a PRE for the Douglas home.

The city tax assessor was suspicious of French's PRE affidavit because, as far as he knew, French lived in Douglas. The assessor brought his concerns to the attention of the city manager, Soren Wolff. After some investigation, Wolff discovered that French had registered to vote in Holland. This concerned Wolff because French was tasked with ensuring the accuracy and integrity of the city's voter registration and elections. Wolff also secured French's water records from the Department of Public Works and was suspicious of the low use levels on the property. On May 17, 2006, Wolff summoned French to a meeting. Wolff asked French where she lived and French responded "that she lived in Saugatuck Township." When confronted with her voter registration card and PRE affidavit, French indicated "that they intended to move to the

---

[1] *Chicago Typographical Union No 16 v Chicago Sun-Times, Inc*, 935 F2d 1501, 1506 (CA 7, 1991). As Judge Posner aptly observed:

> Arbitrators are not required to write opinions, any more than juries are. It is a good thing when they do, because writing disciplines thought. We should not create disincentives to their doing so. The more basic point, however, is that since arbitrators' interpretations must be accepted even when erroneous, it cannot be correct that arbitrators are required to write good opinions. [*Id.*]

[Holland] property. She also indicated that she had been telling her husband . . . that they needed to expedite their move from Douglas to Holland." French admitted that, as the official in charge of voter registration in the city, she knew that a person who only intends to move into the city but has not yet done so is not entitled to register to vote there. Wolff immediately suspended French pending further investigation. The city tax assessor also denied French's PRE.

On May 23, 2006, Wolff notified French that the city had completed its investigation and established the following "facts and misconduct": (1) falsification of a voter registration application and PRE affidavit; (2) improper voter registration in direct contravention of her duty to ensure the accuracy of voter records; (3) improper PRE affidavit to "personally derive substantial financial benefit"; and (4) conduct that could subject the city to negative media attention. Wolff noted that "[a]ny one of the violations described above, standing alone, justifies termination of your employment." Wolff gave French one more opportunity to "provide an adequate explanation or justification for [her] actions."

French responded through her attorney on May 30, 2006. French claimed that she and her husband purchased the Holland home in 2003 and renovated the home throughout 2004 with the intent to move the entire family into that house by the end of the 2004 calendar year. To that end, the Frenches enrolled their children in Holland schools. "In the Spring of 2004, the renovations at the Holland Home were well on their way and [French] began spending more and more of her time at the Holland Home. In her mind, although her family had yet to live there permanently, she resided there." After researching the homestead exemption guidelines, Nicholas determined that he and his wife could file separate tax returns and each claim one of the couple's homes as their principal residence. That decision reached, the couple refinanced the house and put the mortgage in French's name alone. French also changed her driver's license and registered to vote in Holland. Ultimately, the French's attorney ratified their decision to file separate PREs and asserted that French actually resided in the Holland home, rendering her voter registration accurate.

Wolff terminated French's employment on June 6, 2006. In his letter communicating the termination, Wolff asserted, "[T]he statements you have made through your attorney regarding the amount of time you spent at the [Holland] home during the period in question cause us great concern. We believe you have not been completely truthful with the City. This is incompatible with your position and contrary to City policy."

Pursuant to the city's employee handbook, French challenged her termination and requested arbitration. She also appealed the denial of her PRE to the MTT Small Claims Division. The arbitration of French's employment claim was held in abeyance pending the resolution of the MTT appeal. At the MTT hearing, French's counsel argued that the water usage at the Holland home was so low because the home also had access to a well. Counsel noted that French did not live in the home from November 2005 until an unspecified date in the spring of 2006 because the furnace was being replaced. French did not present any witnesses or personally testify. Instead, she offered affidavits from various witnesses regarding the amount of time she spent at each house and how water was supplied to the Holland property.

The ALJ presiding over the MTT hearing concluded that French had not made the Holland home her one true residence. The ALJ relied upon the low water and electrical usage at

the property as well as the sparse furnishings and lack of decoration in the house. The ALJ found French's claimed use of well water to be "impractical." The evidence showed that the Holland home was not equipped with a "pressure pump," which is necessary to overcome the pressure from a city water source and draw groundwater from a well. Accordingly, if the residents wanted to use well, instead of city, water, they would have "to manually turn the water valve on each time water was used in the house." On the other hand, if the property had been equipped with the necessary pressure pump, the home's electrical usage would be much higher. Rather, the trends in utility usage were consistent with seasonal occupancy. The MTT rejected French's exceptions to the ALJ's recommended opinion and judgment and entered it unchanged. French did not appeal the MTT's decision to this Court.

Following the entry of the MTT's final judgment, French's employment claim proceeded to arbitration before David H. Barbour. Before the hearing, the parties stipulated that the MTT judgment "resolved as a matter of fact and as a matter of law" the issues addressed therein. The parties thereby agreed not to relitigate the factual issues that had been decided by the MTT, specifically French's occupation of the Holland home during the time period in question.[2] Barbour directed the parties not to address the MTT evidence and judgment "ad nauseam" as he would read that judgment before rendering an arbitration award.

During the arbitration, French continued to argue that she lived in the Holland home and vacated it only briefly when the furnace was being replaced. She claimed that she honestly believed that the Holland home was her true residence. Noting that the city had terminated French for falsifying records, Barbour asserted, "In determining whether an employer has proven falsification or whether a reasonable penalty has been imposed, arbitrators must analyze a variety of factors including intent, motivation, effect of the falsification, and clarity and consistency of the employer's policy." Barbour considered the conflicting evidence regarding the meeting between French and Wolff during which she was suspended with pay. While the city claimed that the meeting lasted 30 minutes and that French was given ample opportunity to explain her situation, Barbour gave greater credibility to the testimony of French and her coworker that the meeting lasted mere minutes.

The arbitrator continued:

> At this juncture, it is important to step back and ask what was really going on with the decision maker in this case. There was no evidence presented that Ms. French was anything other than a good employee. . . . The alleged dishonesty

[2] During the hearing, the city objected to French's testimony "concerning the issue of occupancy." Barbour responded:

> Well, again, it was determined in the context of a Michigan Tax Tribunal case. And I think there's enough indication here – well I think given the fact that the issue in this arbitration is a just cause dismissal based on dishonesty, the Claimant's state of mind as to her residence address is something that's at issue. So I'm going to allow the questions.

> was totally unrelated to job performance. The City never developed any information that creates a nexus between her performance as City Clerk and the decision to terminate her employment.
>
> The central fact underlying the City's allegation of dishonesty is that when [French] was confronted at the hastily called May 17 meeting and questioned as to where she lived, she stated she lived in Saugatuck. She did not offer up at this meeting, or in the context of the month long process that followed, any detailed explanation of her answer or her living arrangements from March, 2005 through May 17, 2006. She did not state that she had temporarily vacated the residence in December 2005 due to an issue with her furnace. While this lack of explanation within this timeframe is troubling, it pales in comparison to the precipitous reaction to terminate [French's] employment based on a Voter Registration form, a PRE Affidavit, some utility bills, and her apparent truthful response to Mr. Wolff's question at the May 17 meeting.

Barbour further noted that French "began to publicly display certain indicia" that the Holland home was her residence in March and April of 2005. Specifically, French registered to vote attesting that she was a Holland resident, filed her PRE affidavit for the Holland home, changed her driver's license to reflect the Holland home as her permanent address, and enrolled her children in Holland public schools.

Barbour found it only minimally relevant to the employment claim that the MTT had denied French's application for a PRE on the Holland home. "[M]unicipalities and taxpayers can and do have legitimate differences of opinion on occasion over whether a taxpayer qualifies for [a] PRE. The filing of an application for [a] PRE and its ultimate denial by Judgment of the [MTT] does not necessarily demonstrate that a taxpayer was dishonest in filing his/her affidavit." While reiterating his acknowledgment that the parties agreed to be bound by the MTT judgment, Barbour discerned that the MTT had "made no finding that [French] falsified her affidavit requesting a PRE," finding simply that she did not qualify under the law. Barbour then outlined the MTT's "significant findings" in great detail and expressly stated, "In reaching the decision here, all the foregoing findings of the [MTT] are accepted as true."

Ultimately, in ordering the city to reinstate French's employment with full back pay, Barbour ruled, "[T]here is nothing in [the MTT] findings that proves by a preponderance of the evidence that Ms. French was dishonest in filing her PRE Application or that the alleged dishonesty affected her performance as City Clerk." Barbour concluded that French honestly believed she qualified for a PRE and that "[w]ithin this timeframe, Ms. French resided in the [Holland home] *at least for significant periods of time*." (Emphasis added.) Ruling in French's favor, Barbour stated, "Given all of these factors and the lack of any evidence of job performance issues justifying the reaction of the City to the information provided it on May 17, 2006, there is no basis to sustain the City's discharge decision."

The city filed a motion in the circuit court to vacate the arbitration award, contending that Barbour had not actually given the MTT judgment conclusive effect. Specifically, the city pointed to the MTT's conclusions that French had not occupied the Holland home as her principal residence before May 1, 2005, that she never actually took up full-time residency there,

and that, based on the consistently low utility usage, no one was living on the property at the time in question. The city relied on French's testimony that she knew that she had to occupy the Holland home in order to register to vote in the city as evidence of her fraud.

The circuit court agreed with the city and vacated Barbour's arbitration award:

> . . . [The city] is correct that the arbitrator was bound by the [MTT's] findings of facts and conclusions of law under the controlling law of collateral estoppel. . . . [The city] is also correct that the issue of whether defendant occupied the [Holland] home and whether it was her principal residence was fully litigated and determined by the [MTT]. The [MTT] determined that "evidence supports seasonal occupancy of this lakefront property," that there is no evidence that [French] "ever actually took up residency," and that [French] "did not occupy the property as her principal residence." Thus, collateral estoppel bars any finding of fact or conclusion of law contrary to that conclusion.
>
> Here, although the arbitrator paid lip service to the [MTT's] findings, his conclusion that [French] "resided in the [Holland home] at least for significant periods of time" does not comport with those findings. Instead, the arbitrator expanded the [MTT's] finding of seasonal use to "resided" for "significant periods of time," which contradicts the [MTT's] findings.

The circuit court also concluded that the arbitrator failed in his duty to examine the support for the city's other cited grounds for terminating French's employment. Accordingly, the circuit court ordered the parties to conduct a new arbitration hearing.[3]

The parties then proceeded to a second arbitration hearing before Peter D. Houk. Houk declined to review the original arbitration award. He further ordered that the MTT's conclusion that the evidence was "only consistent with seasonal use of this waterfront home" was binding and that the parties were collaterally estopped from trying to prove otherwise. Houk concluded, "French submitted a false voter registration to the City and a [f]alse PRE to avoid paying $8,000 in taxes" and that French's false representations were "detrimental to the image of the City." Concluding that French intentionally filed a false voter registration application with the city as

[3] French filed a claim of appeal in this Court attempting to challenge the circuit court's vacation of the first arbitration award. This Court dismissed the claim of appeal, concluding that the vacation order was "not a final order appealable of right . . . because it [did] not dispose of the claims in this case." *Holland v French*, unpublished order of the Court of Appeals, entered August 12, 2010 (Docket No. 298569). French then filed a delayed application for leave to appeal the vacation order. However, in a two-to-one split decision, this Court denied the application "for lack of merit in the grounds presented." *Holland v French*, unpublished order of the Court of Appeals, entered June 17, 2011 (Docket No. 299937). As a result of these orders, French was unable to challenge the circuit court's decision to vacate the first arbitration award until her claim of appeal from the second arbitration award. Moreover, the city concedes that "[t]his Court has jurisdiction over this matter pursuant to MCR 7.203(A)."

part of her tax evasion scheme, Houk ruled that this constituted just cause for terminating her employment.

The parties then filed competing motions in the circuit court to vacate or confirm the second arbitration award. The circuit court confirmed the award upholding the city's termination of French's employment.

II. THE EMPLOYEE HANDBOOK

The city's employment handbook provides for "binding arbitration" of grievances regarding the termination of an individual's employment. The manual further imposes a "just cause" termination standard. The "discipline" section of the handbook enumerates a nonexhaustive list of actions that may amount to just cause for termination, including "[i]nsubordination," "dishonesty," and "[c]onduct detrimental to the image of the employer[.]" The handbook then sets forth the "procedures" governing arbitration, including:

> *The arbitrator will decide, in writing, whether the employee was discharged for just cause.* The arbitrator will also rule on any tort or civil rights claims made by the employee. If the arbitrator decides that the discharge was not for just cause, or otherwise violated the employee's rights, the arbitrator may decide upon an appropriate remedy. . . . The arbitrator may not add or delete anything in this procedure. *In deciding whether or not the discharge was for just cause or was otherwise improper, the definition of "just cause" and the other rules and policies set forth in the Employee Handbook, and all other relevant policies and procedures, will be observed.* In additional [sic], the arbitrator shall be guided by prior decisions of other arbitrators and the meaning of "just cause" in such prior decisions. [Emphasis added.][4]

The employee handbook constitutes the parties' contractual agreement to arbitrate and sets forth the terms of their arbitration agreement. Notably, the arbitral procedures did not require the arbitrator to render a decision conforming to a certain format, or that the arbitrator's decision incorpoate a detailed map of his thought processes. Rather, the handbook charged the arbitrator with the obligation to "decide, in writing, whether the employee was discharged for just cause," and in making this decision, to "observe[]" "the definition of 'just cause' and the other rules and policies set forth in the Employee Handbook, and all other relevant policies and procedures."

III. STANDARD OF REVIEW

We review de novo a circuit court's decision to vacate an arbitration award. *Saveski v Tiseo Architects, Inc*, 261 Mich App 553, 554; 682 NW2d 542 (2004). The circuit court's power to vacate a statutory arbitration award is very limited. *Gordon Sel-Way, Inc v Spence Bros, Inc*,

[4] The parties agree that their arbitration qualified as statutory and was thus governed by MCL 600.5001 *et seq.*

438 Mich 488, 495; 475 NW2d 704 (1991). That power is governed by MCR 3.602(J)(2), which provides:

> On motion of a party, the court shall vacate an award if:
>
> (a) the award was procured by corruption, fraud, or other undue means;
>
> (b) there was evident partiality by an arbitrator appointed as a neutral, corruption of an arbitrator, or misconduct prejudicing a party's rights;
>
> (c) the arbitrator exceeded his or her powers; or
>
> (d) the arbitrator refused to postpone the hearing on a showing of sufficient cause, refused to hear evidence material to the controversy, or otherwise conducted the hearing to prejudice substantially a party's rights.

The parties agree that only subsection (J)(2)(c) bears relevance to this case.

"[A] court may not review an arbitrator's factual findings or decision on the merits." *Port Huron Area Sch Dist v Port Huron Ed Ass'n*, 426 Mich 143, 150; 393 NW2d 811 (1986). In general, when determining whether to enforce an arbitration award, this Court examines whether the award was beyond the arbitrator's contractual authority. *Lincoln Park v Lincoln Park Police Officers Ass'n*, 176 Mich App 1, 4; 438 NW2d 875 (1989). If the arbitrator in granting the award did not disregard the terms of his employment and the scope of his authority as expressly circumscribed in the contract, judicial review effectively ceases. *Id.* "Furthermore, an award will be presumed to be within the scope of the arbitrators' authority absent express language to the contrary." *Gordon Sel-Way, Inc*, 438 Mich at 497.

Accordingly, a court may review arbitrator Barbour's award for legal error, but may not dissect Barbour's deliberative thought processes. "It is only the kind of legal error that is evident without scrutiny of intermediate mental indicia which remains reviewable[.]" *DAIIE v Gavin*, 416 Mich 407, 429; 331 NW2d 418 (1982). To merit vacation of an arbitration award, an error of law must be evident on the face of the award and

> be so egregious, . . . so materially affect the outcome of the arbitration, . . . so plainly demonstrate a disregard of principles fundamental to a fair resolution of the dispute, or . . . so unequivocally generate a legally unsustainable result, that [the erroneous legal conclusions] cannot be said to be within the parties' agreement to arbitrate or the arbitrator's authority. [*Id.* at 430.]

"By 'on its face' we mean that only a legal error that is evident without scrutiny of intermediate mental indicia will suffice to overturn an arbitration award" as we may not "engage in a review of an arbitrator's mental path leading to the award." *Washington v Washington*, 283 Mich App 667, 672; 770 NW2d 908 (2009) (quotation marks and citations omitted).

IV. COLLATERAL ESTOPPEL

In advocating for the vacation of the first arbitration award, the city argued that Barbour exceeded his powers by failing to follow the doctrine of collateral estoppel. "Collateral estoppel precludes relitigation of an issue in a subsequent, different cause of action between the same parties when the prior proceeding culminated in a valid final judgment and the issue was actually and necessarily determined in the prior proceeding." *Horn v Dep't of Corrections*, 216 Mich App 58, 62; 548 NW2d 660 (1996) (quotation marks and citation omitted). To have preclusive effect, "(1) a question of fact essential to the judgment [must have been] actually litigated and determined by a valid and final judgment, (2) the same parties [must have] had a full and fair opportunity to litigate the issue, and (3) there [must have been] mutuality of estoppel." *Estes v Titus*, 481 Mich 573, 585; 751 NW2d 493 (2008).

"Collateral estoppel applies to unappealed administrative determinations that are adjudicatory in nature and where . . . a method of appeal is provided." *Champion's Auto Ferry, Inc v Mich Pub Serv Comm*, 231 Mich App 699, 712; 588 NW2d 699 (1998). See *Wayne Co v Detroit*, 233 Mich App 275, 276-277; 590 NW2d 619 (1998) (noting that the MTT is a quasi-judicial agency whose "decisions are subject to appeal as of right" and therefore its decisions are final on the merits). See also *Nummer v Dep't of Treasury*, 448 Mich 534, 541-542; 533 NW2d 250 (1995) ("Whether the determination is made by an agency or court is inapposite; the interest in avoiding costly and repetitive litigation . . . still remains."); *Dearborn Hgts Sch Dist No 7 v Wayne Co MEA/NEA*, 233 Mich App 120, 123-124; 592 NW2d 408 (1998) (holding that the plaintiff was collaterally estopped from relitigating in her labor arbitration an earlier factual determination by the State Tenure Commission that she had intentionally struck a coworker). As a general principle, reviewing courts are prohibited from invading "the exclusive fact-finding province of administrative agencies," and when "resolution of a controversy involves both an administrative hearing and a statutorily recognized arbitration procedure, the latter should supplement, not obviate, the former." *Dearborn Hgts Sch Dist*, 233 Mich App at 128 (quotation marks and citations omitted).

Despite that the doctrine of collateral estoppel generally applies to MTT decisions, the preclusive effect of an MTT finding depends on whether the contested issue was actually litigated in the MTT. "In order for collateral estoppel to apply, the issue must be identical to that determined in the prior action." *Amalgamated Transit Union, Local 1564, AFL-CIO v SE Mich Transp Auth*, 437 Mich 441, 451; 473 NW2d 249 (1991). "The doctrine applies only when the issue to be decided is the same as an issue determined in previous litigation. If the issues are not the same, the doctrine of collateral estoppel is not applicable." *Jackson Dist Library v Jackson Co*, 428 Mich 371, 379; 408 NW2d 801 (1987).

The MTT did not resolve every issue necessary to adjudge French's wrongful termination claim and therefore arbitrator Barbour properly rendered independent findings of fact. Specifically, the MTT did not determine whether the city had "just cause" to terminate French's employment or whether the city had "otherwise violated [French's] rights." Moreover, in determining that French honestly believed she was entitled to register to vote in Holland and claim a PRE for the Holland home, arbitrator Barbour reached no findings of fact inconsistent with the MTT judgment.

Indisputably, the MTT's resolution of French's PRE claim did not resolve her employment dispute. The MTT reached no conclusion regarding whether French honestly believed that she was entitled to a PRE, or whether just cause supported her dismissal. French's state of mind when she changed her address on her driver's license and for voting purposes was similarly irrelevant to the tribunal. And the MTT was not asked to consider whether French's job performance otherwise sustained her termination. The issue in the MTT was whether the Holland home qualified for a PRE under MCL 211.7cc, while the issue in the arbitration was whether the city of Holland possessed just cause to terminate French's employment. These are diametrically different issues, and the resolution of one did not bar the resolution of the other.[5] We discern no inconsistency between the MTT opinion and the initial arbitration award.

The only conclusion in the arbitration award that even arguably conflicts with the MTT judgment is Barbour's statement that French had lived in the Holland home "at least for significant periods of time." In the proposed opinion and judgment, which was accepted as the MTT's final judgment, the ALJ found that the Holland home was not French's "'true, fixed, and permanent' residence," reasoning as follows:

> The above pattern of electrical usage is consistent with increased occupancy of this lakefront property during the months of July and August in 2005 and 2006, but is not sufficient to prove consistent occupancy. *This evidence supports seasonal occupancy of this lakefront property and not use as a principal residence.*
>
> * * *
>
> The evidence of utility usage is not consistent with expected usage for an occupied residence. . . . [I]t is more likely that the consistently low water and electric usage was due to the fact that no one was living in the subject property as a principal residence. The only time utility usage increased to anywhere near what would be expected for 2,300 square foot home was in July 2005, and again in July and August 2006, which is consistent with seasonal use of this waterfront home. . . . [T]he subject property never became [French's] "true, fixed, and permanent home" regardless of whether she intended to move there from the Saugatuck home with her family at some point in the future. (Emphasis added).

The MTT concluded that utility usage at the Holland home never reached a level consistent with continuous residence at the property.

Barbour's determination that French lived in the Holland home "at least for significant periods of time," did not contradict the MTT's finding. The MTT accepted as fact that French

[5] Indeed, the MTT opinion states: "The PRE statute . . . does not require Respondent to prove any element of fraud in order to deny the exemption and this opinion makes no conclusion of law as to whether Petitioner believed that she was entitled to the PRE in 2005 when she filed the affidavit."

used the Holland home "seasonal[ly]," but concluded that she had not resided for "the 'greater part of her time' at the subject property." Moreover, the MTT specifically acknowledged:

> It is quite possible for a person to own a residence in Michigan *and to spend considerable time there*, and yet all the facts and circumstances may indicate that a person's connections to that property are insufficient to grant a PRE to that property under MCL 211.7cc. [Emphasis added.][6]

While Barbour was collaterally estopped from finding that French spent a majority of her time at the Holland home, his determination that the time she did spend there was "significant" does not contravene the MTT's conclusions.

V. THE COMPLETENESS OF THE ARBITRAL AWARD

The circuit court also concluded that Barbour failed to address in his opinion all cited reasons for French's termination. On appeal, the city urges that Barbour negligently omitted reference to one of the stated grounds for French's firing: that she engaged in "[c]onduct detrimental to the image of the employer." In the first paragraph under the heading "Discussion and Findings," Barbour specifically referenced "conduct detrimental to the image of the Employer" as a dischargeable offense. Later in the opinion, Barbour set forth his conclusion that French made innocent rather than dishonest mistakes:

> The element of the alleged offense that makes it dischargeable is the dishonest intent to deceive. If that element is lacking by having made a mistake or an error, the offense is not so seriously regarded. In the absence of an intent to deceive, the element of trust is not destroyed and it is not unreasonable to continue the employment relationship. If the element of dishonest intent is lacking because of a failure of proof, no actionable offense has been committed. [Citations omitted.]

We have located no support for the notion that in this case or in general, an arbitrator must discuss in writing each claim made by the parties. Indeed, "Michigan law mandates no requirements relative to form or necessity of factual findings or legal reasoning in support of an award." *DAIIE v Ayvazian*, 62 Mich App 94, 102; 233 NW2d 200 (1975) (quotation marks and citation omitted). Barbour was bound by the handbook to "decide, in writing, whether the employee was discharged for just cause," and in formulating his decision, to "observe[]" "the definition of 'just cause' and the other rules and policies set forth in the Employee Handbook, and all other relevant policies and procedures." Barbour fulfilled that mandate by finding no intent to deceive on French's part and thereby rejecting that the city had "just cause" to discharge her for any of the city's stated reasons.

---

[6] We respectfully disagree with our dissenting colleague that the arbitrator's finding "was directly contrary to the MTT's finding and . . . an improper exercise of authority by the arbitrator." Seasonal use of a property may be "significant" yet not decisive for PRE purposes. And we are hard-pressed to distinguish between Barbour's use of the term "significant" and the MTT's concession that even "considerable time" spent at a location may not yield a PRE.

Moreover, we cannot agree with our dissenting colleague that by omitting specific reference to the charge of "conduct detrimental to the image of the Employer" Barbour exceeded his powers. We find our colleague's analysis particularly anomalous in light of this Court's opinion in *Saveski*, where we made it plain that when reviewing an arbitral award,

> a trial court may not hunt for errors in an arbitrator's explanation of how it determined who is liable under the arbitrated contract, and who owes what damages to whom. . . . To hold otherwise would allow a dissatisfied court to delve deeper and deeper into an arbitrator's factual and legal support until it finally unearthed a perceived error that could justify the court's desired outcome. [261 Mich App at 558.]

We are not permitted to delve into Barbour's subjective mental processes or to second-guess his conclusion that French's innocent acts were insufficient to support just cause as defined in the employee handbook. As this Court has previously explained in an analogous dispute: "It is simply outside the province of the courts to engage in a fact intensive review of how an arbitrator calculated values, and whether the evidence he relied on was the most reliable or credible evidence presented." *Washington*, 283 Mich at 675. The absence of analysis when no analysis is required simply does not doom an arbitration award.

As no legal errors appeared on the face of the arbitration award, the circuit court was bound to enter an order enforcing it. We therefore reverse the circuit court's order vacating the initial arbitration award and remand for entry of an order enforcing that award. Furthermore, because the circuit court should have enforced the initial arbitration award, it obviously erred in ordering a second course of arbitration and in enforcing the subsequent award. We need not address the parties' substantive claims in that regard.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Elizabeth L. Gleicher
/s/ Christopher M. Murray